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Senate

ANTITERRORISM ACT OF 1984

Mr. DENTON. Mr. President, today I introduce legislation to protect the internal security of the United States by creating the offense of terrorism, and to provide the Federal Bureau of Investigation with primary investigative jurisdiction over the crime of terrorism.

As my colleagues will recall, President Reagan, in his state of the Union address, spoke of the need for legislation to help combat terrorism. I believe that this bill is an important first step in that direction.

Strange as it may seem, terrorism *per se* is not a crime in the United States, as it is in many western industrialized nations. Greece, Ireland, Israel, Italy, Japan, the United Kingdom, and West Germany all have enacted legislation to deal with the crime of terrorism. I understand that a new proposal to strengthen the antiterrorist laws of the United Kingdom is under consideration by the House of Commons.

There is a temptation, however, in drafting legislation to deal with the crime of terrorism, to overreact. We must guard against the blind rage that grabs at us when we think of the deaths of 241 marines at the hands of terrorists in Beirut, or of the terrorist bombing of this very building just 4 months ago. We must be careful that any legislation we pass strikes a balance between the need to punish terrorists for their criminal activities, and the constitutional rights of all Americans, especially the right to express dissent.

In my view, my proposed legislation strikes that important balance. It quite simply defines the crime of terrorism, sets forth penalties for its commission, and gives the Federal Bureau of Investigation primary jurisdiction over investigating criminal activities of a terrorist nature.

The last provision, giving jurisdiction to the FBI, is, I believe, essential. We need a focal point, a "central clearing house," as it were, for terrorist investigations. We need to be able to delineate responsibility for investigating

terrorist incidents, if for no reason other than that, when one occurs, there must be centralized command and control of the investigation. The FBI already has the resources and expertise to carry out that function. We just need a clear signal from Congress that the Bureau should put those resources and expertise to work.

I believe that the bill addresses a problem in our society that we must clearly face and resolve as soon as possible. Terrorists must be put on notice that their activities are criminal and simply will not be tolerated by law-abiding Americans. I ask unanimous consent that the text of the bill appear in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2469

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "antiterrorism Act of 1984".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that terrorism is—

(1) an offense which results in the killing of innocent persons, the loss of civil rights through intimidation and coercion, and the loss of property;

(2) a crime that has as its goal the furtherance of a political or ideological objective by violent means;

(3) directed against the orderly and democratic conduct and security of all people;

(4) a threat to our national security and our national interests;

(5) a burden on commerce or threat affecting the free flow of interstate commerce;

(6) a threat to the safety of the President of the United States and Vice President of the United States, the Congress, the Supreme Court, and the Government of the United States as a whole; and

(7) a threat to the continued and effective operation of the Government of the United States and of the government of each State as guaranteed by Article IV of the Constitution.

(b) It is the purpose of this Act to—

(1) protect the internal security of the United States by creating the offense of terrorism; and

(2) grant to the Federal Government and the Federal Bureau of Investigation primary investigative jurisdiction over the crime of terrorism.

OFFENSE OF TERRORISM

SEC. 3. (a) Title 18 of the United States Code is amended by adding after chapter 113 the following new chapter:

"CHAPTER 113A.—TERRORISM

"Sec.

"2331. Definition.

"2332. Offense.

"2333. FBI primary authority.

"§ 2331. Definition

"For purposes of this chapter, the term 'terrorism' means the knowing use of force or violence against any person or property in violation of the criminal laws of the United States or any State, territory, possession, or district, with the intent to intimidate, coerce, or influence a government or person in furtherance of any political or ideological objective.

"§ 2332. Offense

"(a) Whoever commits or procures the commission of an act of terrorism within the United States or any State, territory, possession, or district shall be punished (1) by death, if the death of any person results from the commission of the act of terrorism, and if the verdict of the jury shall so recommend, or (2) by imprisonment for a term of years not less than 20, or for life, or for life without possibility of parole.

"(b) Whoever attempts to commit an act of terrorism within the United States or any State, territory, possession, or district shall be punished (1) by death, if the death of any person results from commission of the attempt, and if the verdict of the jury so recommend, or (2) by imprisonment for not less than 10 years nor more than 20.

"(c) Whoever threatens to commit an act of terrorism within the United States or any State, territory, possession, or district shall be punished by imprisonment for not less than 5 years nor more than 10 years.

"(d) In the case of a second or subsequent conviction under subsection (a) or (b), such person shall be sentenced to a term of life imprisonment without possibility of parole, or death, if the death of any person results from the commission or attempted commission of the act of terrorism.

"(e)(1) A person shall be subjected to the penalty of death for any offense prohibited by this section only if a hearing is held in accordance with this subsection.

"(2) When a defendant is found guilty of or pleads guilty to an offense under this section for which one of the sentences provided is death, the judge who presided at the trial

or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in paragraphs (6) and (7), for the purpose of determining the sentence to be imposed. The hearing shall not be held if the Government stipulates that none of the aggravating factors set forth in paragraph (7) exists or that one or more of the mitigating factors set forth in paragraph (6) exists. The hearings shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury; or

"(iii) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the court and of the Government.

"(3) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of the national security. Any presentence information withheld from the defendant shall not be considered in determining the existence or the nonexistence of the factors set forth in paragraph (6) or (7). Any information relevant to any of the mitigating factors set forth in paragraph (6) may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in paragraph (7) shall be governed by the rules governing the admission of evidence at criminal trials. The Government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in paragraph (6) or (7). The burden of establishing the existence of any of the factors set forth in paragraph (7) is on the Government. The burden of establishing the existence of any of the factors set forth in paragraph (6) is on the defendant.

"(4) The jury, or if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or non-

existence of each of the factors set forth in paragraph (6) and as to the existence or nonexistence of each of the factors set forth in paragraph (7).

"(5) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the factors set forth in paragraph (7) exists and that none of the factors set forth in paragraph (6) exists, the court shall sentence the defendant to death. If the jury or, if there is no jury, the court finds that none of the aggravating factors set forth in paragraph (7) exists, or finds that one or more of the mitigating factors set forth in paragraph (6) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

"(6) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that at the time of the offense—

"(A) he was under the age of eighteen;

"(B) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

"(C) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

"(D) he was a principal (as defined in section 2 (a) of title 18 of the United States Code (18 U.S.C. 2 (a))) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

"(E) he could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing death to another person.

"(7) If no factor set forth in paragraph (6) is present, the court shall impose the sentence of death on the defendant if the jury, or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that the death of another person resulted from the commission or attempted commission of the offense, and

"(A) the defendant has been convicted of another federal or State offense (committed either before or at the time of the commission or attempted commission of the offense) for which a sentence of life imprisonment or death was imposable;

"(B) the defendant has previously been convicted of two or more Federal or State

offenses with a penalty of more than one year imprisonment (committed on different occasions before the time of the commission or attempted commission of the offense), involving the infliction of serious bodily injury upon another person;

"(C) in the commission or attempted commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense or attempted offense; or

"(D) the defendant committed or attempted to commit the offense in an especially heinous, cruel, or depraved manner.

"§ 2333. FBI primary authority

"(a) Violations of this chapter shall be investigated by the Federal Bureau of Investigation. Assistance may be requested from any Federal, State, or local agency, including the Army, Navy, and Air Force, notwithstanding any statute, rule, or regulation to the contrary.

"(b) when Federal investigative or prosecutive jurisdiction is asserted for a violation of this chapter, such assertion shall suspend the exercise of jurisdiction by a State or local authority, under any applicable State or local law, until Federal action is terminated."

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 113 the following:

"113A. Terrorism 2331."